

## REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 6, 13, and 16 have been cancelled without prejudice or disclaimer.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-5, 7-12, 14, 15, 17, and 18 are now pending in this application.

### **Rejections under 35 U.S.C. § 103**

Claims 1, 2, 6-10, 13 and 14 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,215,044 to Banzhaf *et al.* (hereafter “Banzhaf”) in view of U.S. Patent No. 4,176,630 to Elmer (hereafter “Elmer”). This rejection is respectfully traversed.

Banzhaf discloses a cooling system for a vehicle that includes a turbocharger 9 that conveys air to a heat exchanger 45 that is also provided with coolant via line system 41. See col. 7, lines 18-30, and Figure 6 of Banzhaf. On page 3 of the Office Action the Office identifies the temperature sensor 97 of Banzhaf as a temperature sensor 97 provided a short distance downstream of the heat exchanger 45.

However, as noted on page 3 of the Office Action, the temperature sensor 97 is not provided at a coolant outlet of a radiator, wherein the temperature sensor is located at the coolant outlet prior to any branches in a coolant passage extending from the coolant outlet, as recited in claim 1. Claim 10 includes similar language. Claims 2, 7-9, and 14 depend from claim 1. Instead, Figure 6 of Banzhaf shows that the sensor 97 is located after branches in the

passage leading from the heat exchanger 45 so that the sensor 97 is downstream of heat exchangers 43, 45, and 90.

Elmer discloses a system that includes a radiator 17 for cooling the coolant of an engine 10 and an air cooler 13 for cooling compressed air supplied to the engine 10. See Elmer at col. 2, lines 24-44. Elmer discloses that a cooling fan 15 is arranged to supply cooling air to the radiator 17 and the cooler 13. See Elmer at col. 2, lines 41-44.

The Office argues on page 4 of the Office Action that it would have been obvious to move the temperature sensor 97 in Figure 6 of Banzhaf to downstream of the heat exchanger 45 and before any branch because Elmer discloses a temperature sensor in the charge air passage 20 downstream of the air cooler 13. Applicant notes that the Office identifies the sensor 29 as a temperature sensor provided at the coolant outlet of a coolant radiator on page 4 of the Office Action. The Examiner argues that one of ordinary skill in the art would have made such a modification to monitor cooling water temperature and because such a modification would involve a rearrangement of parts that would not have modified the operation of the device of Banzhaf. Applicant respectfully disagrees.

The modification proposed by the Office would change the operation of the device of Banzhaf, contrary to the argument by the Office. The temperature sensor 97 of Banzhaf is provided downstream of three heat exchangers 45, 43, 90, not only heat exchanger 45. If the temperature sensor 97 is moved to downstream of only the heat exchanger 45, the system of Banzhaf would not receive temperature data downstream of heat exchangers 43 and 90 and the system could not properly function to modify the heat exchanging performance of Banzhaf's device if a coolant temperature downstream of heat exchangers 43 and 90 is too high or too low. Thus, one of ordinary skill would not have made such a modification because the rearrangement of parts argued by the Office would result in a modification of the operation of the device of Banzhaf. See *In re Japikse*, 86 USPQ 70 (CCPA 1950), which was cited by the Office on page 4 of the Office Action.

Furthermore, one of ordinary skill in the art would not have been motivated to move the temperature sensor 97 of Banzhaf "in order to monitor the cooling water temperature," as

argued by the Office because the temperature sensor 97 already monitors the cooling water temperature exiting heat exchanger 45. In other words, the Office argues that Elmer provides a modification to rearrange the temperature sensor 97 of Banzhaf but this reason for such a rearrangement is already provided by the device of Banzhaf. The Office cites *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984) on page 4 of the Office Action to support its argument but as noted in the quotation provided by the Office, this case states that “[t]he prior art must provide a motivation or reason for the worker in the art, without benefit of appellant’s specification, to make the necessary changes in the reference device.” A copy of *Ex parte Chicago Rawhide Mfg. Co.* is enclosed with this response. Thus, *Ex parte Chicago Rawhide Mfg. Co.* does not support the argument by the Office because the reason argued by the Office was already provided by Banzhaf and therefore not a sufficient motivation or reason for one of ordinary skill in the art to make the changes in Banzhaf argued by the Office.

In addition, the Office argues on page 4 of the Office Action that the modification argued by the Office would have been obvious to one of ordinary skill because Applicant’s specification does not disclose “any benefit to locate the temperature sensor before any branches and the location does not result in unexpected results.” Applicant respectfully disagrees because the lack of objective evidence of nonobviousness does not weigh in favor obviousness. See MPEP § 716.01(a), citing *Miles Labs. Inc. v. Shandon Inc.*, 997 F.2d 870, 878, 27 USPQ2d 1123, 1129 (Fed. Cir. 1993), *cert. denied*, 127 L. Ed. 232 (1994). In other words, simply because an Applicant did not argue unexpected results does not provide a proper basis for obviousness.

It is the Office who carries the initial burden of factually supporting a *prima facie* case of obviousness. See MPEP § 2142. If an Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit the evidence of nonobviousness. See MPEP § 2142. As discussed above, the Office has not provided a *prima facie* case of obviousness because the modification argued by the Office would have modified the operation of the device of Banzhaf and because the Office has not provided a sufficient reason to make such a modification.

Furthermore, Elmer does not cure the deficiencies of Banzhaf because Elmer only discloses a temperature sensor in a passage without branches and does not disclose or suggest where such a temperature sensor would be placed relative to a branch in the passage.

For at least the reasons discussed above, the combination of Banzhaf and Elmer does not render claims 1, 2, 6-10, 13, and 14 to be unpatentable because Banzhaf and Elmer do not disclose all of the features of claims 1 and 10 and because one of ordinary skill in the art would not have made the modification argued by the Office. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1, 3, 11, 12, and 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Elmer in view of U.S. Patent No. 4,485,624 to Melchior (hereafter "Melchior"). This rejection is respectfully traversed.

The Office argues on pages 6-7 of the Office Action that Elmer provides the features of claims 1 and 10, including a temperature sensor 29 located in a coolant passage prior to any branches, as recited in claims 1 and 10. However, Elmer only discloses a temperature sensor in a passage without branches and does not disclose or suggest where such a temperature sensor would be placed relative to a branch in the passage. Thus, Elmer does not disclose or suggest that a temperature sensor, or a determination of coolant temperature, at a coolant outlet prior to any branches in a coolant passage extending from the coolant outlet, as recited in claims 1 and 10.

Nor does Elmer disclose or suggest a main coolant circuit in addition to a low temperature coolant circuit, wherein the main coolant circuit is configured to provide coolant to an engine and the main coolant circuit and the low temperature coolant circuit are connected so that there is an exchange of coolant between the main coolant circuit and the low temperature coolant circuit, as recited in claim 1. Claim 10 includes similar language. As shown in the drawings of Elmer, the coolant circuits for the radiator 17 and the air cooler 13 are separate and unconnected so that there is no exchange of coolant.

On page 7 of the Office Action the Office cites col. 2, lines 55-70, of Melchior, which regards Figure 1 of Melchior. Melchior states that Figure 1 shows a known supercharged

internal combustion engine in which a supercharging compressor 5 of a turbocompressor 6 provides supercharged air through a heat exchanger 10 and to an engine 1. See Melchior at col. 2, lines 24-63, and Figure 1. The heat exchanger 10 is an air/liquid heat exchanger cooled by a coolant circuit 13 that passes from a radiator 14 to the heat exchanger 10 and then to the engine 1. See Melchior at col. 2, lines 54-63, and Figure 1.

However, Melchior does not disclose or suggest a main coolant circuit in addition to a low temperature coolant circuit, wherein the main coolant circuit is configured to provide coolant to an engine and the main coolant circuit and the low temperature coolant circuit are connected so that there is an exchange of coolant between the main coolant circuit and the low temperature coolant circuit, as recited in claims 1 and 10, because the coolant circuit 13 of Melchior is a single circuit that extends between the radiator 14, heat exchanger 10, and the engine 1. Therefore, Melchior does not remedy the deficiencies of Elmer.

In addition, Melchior teaches against the system of Figure 1. Melchior teaches that the system of Figure 1 of Melchior has several drawbacks, such as the blower system being bulky and requiring high power, low air temperatures at the input of the engine being difficult to obtain, and interference dangers between the liquid circuit and the air circuit. See Melchior at col. 3, lines 46-53. Thus, one of ordinary skill in the art would not have looked to the teachings of Figure 1 of Melchior when considering a modification to the device of Elmer because Melchior teaches away from the system of Figure 1.

Furthermore, the Office argues on page 7 of the Office Action that one of ordinary skill would have been motivated to modify the device of Elmer by the teachings of Melchior in order to cool supercharged air. However, the device of Elmer already cools the air flowing through the air cooler 13 with cooling air. See Elmer at col. 2, lines 41-44. Thus, the Office has not provided a sufficient reason for one of ordinary skill in the art to make the modification argued by the Office.

For at least the reasons discussed above, the combination of Elmer and Melchior does not render claims 1, 3, 11, 12, and 15-17 to be unpatentable because the combination of Elmer and Melchior does not disclose or suggest all of the features of claims 1 and 10 and

because one of ordinary skill would not have looked to the teachings of Melchior when modifying the device of Elmer. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Elmer and Melchoir in view of U.S. Patent No. 6,679,431 to Mathew *et al.* (hereafter “Mathew”). This rejection is respectfully traversed. Mathew fails to remedy the deficiencies of Elmer and Melchoir discussed above in regard to independent claim 1, from which claims 4 and 5 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

**Conclusion**

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

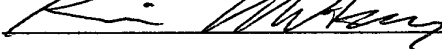
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

JAN 27 2010

Date \_\_\_\_\_

By  \_\_\_\_\_

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mark is how the mark, will be perceived by used on applicant's the mark indicates of valuer or a degree attain.

is "a trademark or members of a coop- or other collective and includes marks ship in a union, an ganization." (Section 46) Collective marks rademarks or collec- re used by the mem- identify their own listiguish them from While the collective tise or promote the rformed by its mem- ne organization may n services under the

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on applicant refers to vith its brief.<sup>1</sup> We rgument with refer- the extent that each scusses and indicates n a membership ba- appear in each of the none makes it clear icated by the letters appear to inform the l by those letters has er by education, ex- d a degree of profi- t person to be recog- ied Valuer or SCV. speak of SCV as a

Exhibits B and C are gh A is similar to the ginal specimens, it dif- s therefore like exhibits : have not considered in ial which was not sub- ion phase of the pros- See: Trademark Rule ve June 22, 1983.

professional designation "awarded" by the applicant. They explain that the designation was adopted because international investors, financiers and corporate executives, among others, conducting international business activities needed a single designation for professional valuers which could be recognized worldwide and would presumably, foster a better understanding of the professional qualifications of one using the designation.

The certificate given members by applicant states that applicant "Certifies that \_\_\_\_\_ is duly registered as a SCV Senior Certified Valuer with the International Institute of Valuers and has been admitted, granted this certificate and declared to be a Senior Member."<sup>2</sup> The language of this certificate indicates that the holder has been given two things, an award and an admission to membership. We do not find this language at all conclusive of the position applicant has taken herein. That is, that SCV as used thereon indicates membership in applicant.

In view of the foregoing, we agree that the letters SCV constitute a professional designation but find that they do not function as a collective membership mark.

Accordingly, the refusal to register is affirmed.

<sup>2</sup> Applicant argued that unlike a degree, the certificate and the professional designation must be surrendered upon the termination of membership. The Examining Attorney used the words, degree or title. While presumably degrees once earned need not be surrendered, there is no reason to assume that titles might not be terminable under certain conditions. In any event, both the language of the certificate, "... certifies that \_\_\_\_\_ is duly registered as a SCV Senior Certified Valuer" and the fact of the terminability of the award of said title sound more in the nature of a certification mark than a membership mark, although this record would not support registration as such. See: TMEP 1305.07(a) and 1305.14.

## Patent and Trademark Office Board of Appeals

Ex parte Chicago Rawhide Manufacturing Company

Opinion dated Feb. 22, 1984

### PATENTS

#### 1. Pleading and practice in Patent Office — In general (§54.1)

Mere reliance on reference to evidence obviousness of particular feature of claim pending during prosecution of application prior to issuance of patent, which claim is cancelled prior to granting of patent, is not sufficient to justify holding that substantial new question of patentability affecting claim of patent has not been raised by citation of said patent.

#### 2. Pleading and practice in Patent Office — Evidence (§54.5)

Public interest may demand finding that substantial new question of patentability affecting patent claim has been raised where reference cited during prosecution of patent is presented and viewed in different light than it was considered during prosecution of application which issued as patent.

#### 3. Reissue — In general (§58.1)

Public interest in valid patents intended to be served by patent reexamination sections of patent laws cannot be disregarded where reasonable new interpretation of reference disclosure is presented for first time via request for reexamination.

#### 4. Patentability — Anticipation — Modifying references (§51.217)

Mere fact that worker in art could rearrange parts of reference device to meet terms of claims on appeal is not by itself sufficient to support finding of obviousness.

#### 5. Patentability — Anticipation — Modifying references (§51.217)

Prior art must provide motivation or reason for worker in said art to make necessary changes in reference device, without benefit of appellant's specification, in order to be obvious.

#### Particular Patents — Closed Molding

3,936,257, Christiansen and Andersen, Closed Stroke Molding, rejection of claims 1, 2 and 4 reversed.

Appeal from Art unit 147.



Reexamination proceedings, Control No. 90/000,002, filed July 1, 1981, to reexamine patent no. 3,936,257, Feb. 3, 1976 on application, Serial No. 155,469, filed Jun. 22, 1971. From decision rejecting claims 1-6, applicant appeals (Appeal No. 552-52). Reversed.

James T. FitzGibbon, FitzGibbon, Roehrig, Greenawalt & Stone, both of Chicago, Ill., and William G. Coon, Detroit, Mich., for appellant.

Before Serota, Pellman, Lovell, Examiners-in-Chief.

Serota, Examiner-in-Chief.

This appeal is from the Examiner's decision finally rejecting claims 1 through 6. Claims 1, 2 and 3 correspond to the claims of the here involved patent. Claims 4, 5 and 6 were added during the proceedings before the Examiner, which proceedings resulted from the granting of a request by a third party, Federal-Mogul Corp., that the appellant's patent be reexamined. The Examiner at page 4 of his answer, indicates that claim 6 is allowable and that claims 3 and 5 would be allowable if rewritten in independent form or made to depend from an allowed claim. Accordingly, this appeal is dismissed as to claims 3, 5 and 6, leaving for our consideration the Examiner's refusal to allow claims 1, 2 and 4.

Claim 1 is illustrative of the subject matter to which the claims on appeal are directed and reads as follows:

1. A mold assembly for forming an insert molded article comprised of a relatively rigid insert element and a flexible body portion, said mold assembly comprising a first, fixed mold part having surfaces thereon defining at least a portion of a molding cavity, and second and third relatively movable mold parts, at least one of which includes surfaces thereon defining the remainder of said molding cavity, insert-receiving surfaces forming a part respectively of each of said second and third mold parts, means confining said second and third mold parts to a predetermined extent of movement along a given axis relative to said first part, spring means providing resistance to movement of said third part during one portion of said predetermined movement extent when said second and third mold parts move toward said fixed mold part, means for moving said second part away from said third part along said axis to open said second and third parts and to permit positioning of an insert element between said insert-receiving surfaces, and means for moving said second

and third parts along said axis against the resistance of said spring while said insert is received between said second and third parts against the resistance of said spring.

The sole reference now relied upon by the Examiner in support of this rejection is:

Baney et al. 3,315,316 Apr. 25, 1967 (hereafter Baney)

The Examiner has rejected the claims on appeal under 35 USC 103 as obvious from Baney.

The owner-appellant (hereinafter appellant) has traversed the Examiner's rejection, and in addition has questioned the propriety of this entire reexamination proceeding. In effect, the appellant has asserted that since the Baney reference was considered by the Patent and Trademark Office prior to the granting of the here involved patent, it is improper to subject the patent to a reexamination procedure based upon the Baney patent.

We will first consider the issue raised by the appellant regarding the propriety of this reexamination proceeding. In substance, the appellant contends that since prior to the issuance of the here involved patent, the Board of Appeals reversed the then outstanding rejections based upon the same evidence as now being relied upon in support of the current rejection, it is improper for the Examiner to maintain the rejection. The appellant bases its position on an analogy to the legal doctrine of "res judicata" or "law of the case." The appellant urges that the Examiner has no authority, in effect, to overrule the decision by the Board of Appeals, pursuant to which decision the patent was issued.

[1,2,3] A review of the patent file reveals that in the first Office action on the merits, several of the claims then in the application were rejected under 35 USC 103 as unpatentable over a Jackson patent in view of Baney, McKinven or Bush. In the response to that rejection, the claims elected for prosecution and which were rejected were cancelled and new claims were added. These new claims were subsequently rejected based solely on the Jackson reference. The Examiner did not maintain his rejection which included the Baney reference. The Examiner's rejection based solely upon Jackson was appealed to the Board of Appeals. The Baney reference was not discussed in the appeal brief, the Examiner's Answer, or the Board's decision. Thus, contrary to the appellant's assertions in his brief before this panel, the Board of Appeals has not previously overruled a rejection based upon Baney. As far as can be determined from the written record, the Board has not had an occasion to consider an Examiner's rejection based upon the Baney reference.

In such circumstances, the doctrine of "res judicata" is here applicable, the "res judicata" or "law of the case" have precluded the Examiner from maintaining the Baney reference. The reference to evidence of a particular feature of a patent, the prosecution of an appeal of a patent, or the issuance of a patent, is not sufficient to justify a holding that a new question of patentability has been presented and viewed. The public interest in the patent system is served by the sections of the patent law which guard where a reason for a reference disclosure is first time via a request. This is especially true where a reference had previous secondary manner for comparison. Compare with In re I 438 F.2d 618, 169 USPQ 169 (Ct. Cl. 1970) (paragraph). Under the finding that there was no proper rejection on Baney.

[4,5] In our view the matter would not have the meaning of 35 USC 103 if the Baney patent. As appellant, and as applied by the Examiner, in order to maintain the claims on appeal Baney device would have been different from Baney. The elements also be required to coexist in the reference. The reference device to support a finding of art must provide a means for the worker in the art to make the specific changes in the Examiner has not provided support the conclusion that art would have had a

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In such circumstances, even assuming that the doctrine of "res judicata" or "law of the case" is here applicable, there is not question of "res judicata" or "law of the case" that would have precluded the Examiner in this proceeding from maintaining a rejection based upon the Baney reference. The mere reliance on a reference to evidence the obviousness of a particular feature of a claim pending during the prosecution of an application prior to the issuance of a patent, which claim is cancelled prior to the granting of the patent, is not sufficient to justify a holding that "a substantial new question of patentability affecting" a claim of a patent has not been raised by the citation of that patent. The public interest may demand a finding that "a substantial new question of patentability affecting" a patent claim has been raised where a reference cited during the prosecution of the patent is presented and viewed in a different light than it was considered during the prosecution of the application which issued as a patent. The public interest in valid patents intended to be served by the patent reexamination sections of the patent laws cannot be disregarded where a reasonable new interpretation of a reference disclosure is presented for the first time via a request for reexamination. This is especially true, where, as here, the reference had previously been considered in a secondary manner for a very limited purpose. Compare with *In re Riddle*, 58 CCPA 983, 438 F.2d 618, 169 USPQ 45, 47 (penultimate paragraph). Under the facts here present we find that there was no reason why the Examiner was here precluded from bottoming a proper rejection on Baney.

[4,5] In our view the here claimed subject matter would not have been obvious within the meaning of 35 USC 103 based solely on the Baney patent. As correctly urged by the appellant, and as apparently recognized by the Examiner, in order to meet the terms of the claims on appeal, the elements of the Baney device would have to be arranged in a manner different from that disclosed by Baney. The elements of the reference would also be required to coact differently from the way they coact in the arrangement disclosed by the reference. The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of the appellant's specification, to make the necessary changes in the reference device. The Examiner has not presented any evidence to support the conclusion that a worker in this art would have had any motivation to make

the necessary changes in the Baney device to render the here claimed device unpatentable. We additionally note that the interrelationship and the relative movements of the various elements required by the claims on appeal would not be met by the Baney device even if reconstructed as suggested by the Examiner. The requirements of appealed claim 1, commencing with the phrase "spring means providing \* \* \*" just are not met even if elements 31, 15 and 36 of Baney are designated respectively as first, second and third mold parts as suggested by the Examiner. The requirements of this portion of the claim cannot be ignored. The coaction of the elements required in the claims on appeal would not be present in the Baney device as modified by the Examiner.

Accordingly, the Examiner's rejection is not sustained. The decision of the Examiner is reversed.

#### Patent and Trademark Office Trademark Trial and Appeal Board

In re American Standard Inc.

Decided Mar. 28, 1984

#### TRADEMARKS

##### 1. Marks and names subject to ownership — Descriptive — How determined (§67.5073)

Abbreviations of descriptive terms that still convey to purchasers descriptive connotations of original or source terminology are themselves merely descriptive; when abbreviation is so vague or fanciful that it will not readily be recognized as merely shorthand form of descriptive matter for which it stands, then any mark based on it is not to be deemed merely descriptive.

##### 2. Marks and names subject to ownership — Descriptive — How determined (§67.5073)

Descriptive connotation for element of mark does not necessarily yield that result for mark viewed in its entirety.

##### 3. Marks and names subject to ownership — Descriptive — How determined (§67.5073)

Conjecture and doubts about descriptiveness of term require resolution in *Lanham*